

REMARKS

Claims 1-9 and 13-16 remain for prosecution in the present application.

Claims 10-12 have been canceled.

The claims remaining in the present application have been rejected over Landen 3,567,057 combined with Landen 3,567,057, further combined with either Herr 4,579,238, Morris Re 29,779 or Miceli 6,161,711. Reconsideration is respectfully requested.

Before discussing application of the references applied by the Examiner to the application claims, the standards for analysis of these references and application of the same to the invention bear restating. As the CCPA well stated in *In re Carroll*, 601 F.2d 1184, 1186, 202 USPQ 571,572 (1979):

One of the more difficult aspects of resolving questions of non-obviousness is the necessity "to guard against slipping into use of hindsight." *Graham v. John Deere Co.*, 383 U.S. 1, 36, 148 USPQ 459, 474 (1965). Many inventions may seem obvious to everyone after they have been made. However, 35 U.S.C. 103 instructs us to inquire into whether the claimed invention "would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." Thus, in deciding the issue of obviousness, we must look at the prior art presented from a vantage point in time prior to when the invention was made, and through the eyes of a hypothetical person of ordinary skill in the art.

The standard of Section 103 is thus not what could be read into the references having applicant's disclosure and claims in mind.

It is difficult but necessary that the decisionmaker forget what he or she has been taught at trial about the claimed invention and cast the mind back to the time the invention was made..., to occupy the mind of one skilled in the art who is presented only with the references, and who is normally guided by the then-accepted wisdom in the art.

W. L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983). Simply stated, the references must be viewed for what they teach the artisan who has in mind the problem to which applicants' invention is directed, but not applicants' solution to the problem. Such standards for review unquestionably are often more easily stated than applied, particularly when applicants' solution is seemingly simple and straightforward when viewed with the benefit of hindsight. *In re Carroll*; *supra*, *In re Sporck*, 301 F.2d 686, 689-690, 133 USPQ 360, 363 (CCPA 1962); *In re Marshall*, 578 F.2d 301, 198 USPQ 344 (CCPA 1978).

It is axiomatic that, to support a rejection of the subject claims on the basis of obviousness, it is necessary that the references teach, suggest or provide incentive to combine elements from various references to obtain the invention. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ 2d 1434 (Fed. Cir. 1988); *In re Geiger*, 815 F.2d 686 (Fed. Cir. 1987); *Ex parte Clapp*, 227 USPQ 972 (POBA 1985). This is particularly true, of course, where the elements of the references would be required to coact with each other in a manner different from the way they coact in the reference disclosures, or where the key or distinguishing element of the claims is completely lacking in the references.

[I]n order to meet the terms of the claims on appeal, the elements of the [prior art] device would have to be arranged in a manner different from that disclosed by [the art]. The elements of the reference would also be required to coact differently from the way they coact in the arrangement disclosed by the reference. The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide motivation or reason for the worker in the art, without the benefit of applicant's specification, to make the necessary changes in the reference device.

Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (POBA 1984). See also *Fromsom v. Advanced Offset Plate, Inc.*, 755 F.2d 1549, 225 USPQ 26 (CAFC 1985); *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (CAFC 1983) and *Ex parte Stauber*, 208 USPQ 945, 946 (POBA 1980).

Simply stated:

It is wrong to use the [application] as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

Orthopaedic Equipment Co., Inc. v. U.S., 702 F.2d 1005, 217 USPQ 193, 199 (Fed. Cir. 1983).

When the incentive to combine the teachings of the references is not readily apparent, it is the duty of the Examiner to explain why combination of the reference teachings is proper.

Ex parte Skinner, 2 USPQ 2d 1788, 1790 (BPAI 1987). This the Examiner has not done in the present application.

Landen 3,659,735 discloses a package that includes a container 10 having a neck 12 with external formations 18,19 and a circumferentially continuous spring element 36. The closure 38 has internal lugs 17 for engagement with the projections and a conical skirt end portion for engagement with the circumferentially continuous spring element 40. It will be noted that the lock formations 18,19 are formed on a recessed cylindrical surface, whereas spring element 40 is formed on a second cylindrical surface displaced radially outwardly from the recessed cylindrical surface on which the bayonet lock formations are formed.

Landen 3,567,057 apparently is cited for disclosure in FIG. 9 of a spring member 34 having separate spring arms 36. However, it will be noted that all claims 1, 5 and 15-16 of the present application recite that the spring elements are on a one-piece container, as distinguished from the separate spring element in Landen '057, and that the circumferentially spaced flexible resilient spring elements are angularly disposed between the projections on the container neck finish. The closure securement means in Landen '057 comprises screw threads, so the latter limitation in the present application claims has no application to Landen '057, either alone or combined with Landen '735. The claim recitation that the spring elements are angularly disposed between the projections is an important limitation, particularly when combined with the limitation that the projections and the spring elements both extend radially outwardly from a single outer cylindrical surface of the container, in that the spring elements and the projections can then be readily molded. This is not disclosed or suggested by the combination of Landen '735 and Landen '057.

Herr 4,579,238 apparently is cited solely for its disclosure of an annular wall 24 disposed within the skirt 15 for internal sealing engagement with the wall of the container.

Morris Re 29,779 apparently is cited solely for its disclosure of the dome 38 with the external bead 24 for securing the closure to the container mouth in an inverted non-child-resistant mode of operation illustrated in FIG. 2.

It is unclear what Miceli 6,161,711 is considered to add to Morris. Miceli also discloses a closure having a dome with an external bead for receipt in the container mouth in an inverted non-child-resistant mode illustrated in FIG. 13. Both Morris and Miceli are

directed to a different type of child-resistant closure - i.e., a closure that must be rotated on the container to align an internal lug on the closure with a notch in an external bead on the container neck finish to enable removal of the closure. This type of child-resistant closure is not the same as or equivalent to the push-and-turn-type child-resistant closure of the type to which Landen '735 and Herr are directed.

Turning to the application claims, amended independent claim 1 recites a child-resistant package that includes a one-piece container having an open end surrounded by a cylindrical wall with a central axis and a cylindrical outer surface. A plurality of circumferentially spaced projections extend radially outwardly from the cylindrical outer surface of the wall adjacent to the open end, and notches are disposed on undersides of the projections. A plurality of circumferentially spaced flexible resilient spring elements extend radially outwardly from the cylindrical outer surface of the wall and are angularly disposed between the projections. A closure includes a base wall, a cylindrical skirt extending from the base wall to an axial edge spaced from the base wall, a plurality of circumferentially spaced lugs extending radially inwardly from the skirt, and a circumferentially continuous annular wall extending axially from the base wall coaxially with and spaced radially inwardly from the skirt. The axial edge of the cylindrical skirt is adapted for axial edge abutment with the spring elements on the container at positions on the spring elements spaced radially outwardly from the cylindrical wall to urge the lugs into the notches with the annular wall being in internal plug-sealing engagement with the open end of the container. Removal of the closure requires axial movement of the closure against the spring elements and rotation of the closure to move the lugs out of the notches.

First, as noted above, the combination of Landen '735 and Landen '057 does not disclose or suggest a one-piece container having a plurality of locking projections and a plurality of circumferentially spaced flexible resilient spring elements extending radially outwardly from a single cylindrical outer surface of the container wall or in which the plurality of flexible resilient spring elements are angularly disposed between the projections. Furthermore, while the closure skirt in Landen '735 includes a cylindrical portion, the portion of the skirt that engages the spring element 36 is a conical portion that flares radially outwardly from the free edge of the cylindrical portion of the skirt. Even if the skirt in Landen '735 were modified to be strictly cylindrical, for which modification there is no disclosure or suggestion in the art, the free edge of such a skirt would engage the spring element 36 immediately adjacent to the outer surface of the cylindrical wall portion of the container from which the spring element 36 extends, and thus not at positions on the spring elements (plural) spaced radially outwardly from the cylindrical surface. Thus, Landen '735 combined with Landen '057 does not disclose or suggest these limitations of amended claim 1. Herr 4,579,238 is cited solely for provision of an internal plug seal wall on the closure, and does not disclose or suggest the deficiencies of Landen '735 and Landen '057 discussed above. Independent claim 1 together with dependent claims 2-4 clearly are allowable over the combination of Landen '735, Landen '057 and Herr, either alone or additionally in view of Morris Re 29,779.

Independent claim 5 has been amended to include the same recitations as discussed above with respect to claim 1. Independent claim 5 has been rejected over Landen '735 and Landen '057, this time combined with Miceli. Miceli apparently is cited solely for disclosure of the plug seal wall 29 (FIG. 16) on the closure. It is unclear what

Miceli is considered to add to Herr in this respect, particularly inasmuch as Herr is directed to a push-and-turn-type child-resistant closure whereas Miceli is directed to a completely different type of child-resistant closure. In any event, Miceli clearly does not disclose or suggest the numerous deficiencies of Landen '735 and Landen '057 discussed in detail above, and amended claim 5 clearly is allowable over the two Landen references combined with either Miceli or Herr. Dependent claims 6-9 are allowable along with independent claim 5.

Amended independent claim 13 is directed to a container of one-piece plastic construction that includes an open end surrounded by a cylindrical wall with a central axis and a cylindrical outer surface. A plurality of spaced projections extend radially outwardly from the cylindrical outer surface of the wall adjacent to the open end, and notches are provided on the projections. A plurality of circumferentially spaced resilient flexible spring elements extend radially outwardly from the same cylindrical outer surface of the wall and are angularly disposed between the projections. Amended independent claim 13 thus is allowable over Landen '735 combined with Landen '057 for reasons discussed in detail above with respect to claim 1. It is unclear what the Herr reference is considered to add to the Landen references with respect to claim 13. Dependent claim 14 is allowable along with independent claim 13.

Amended independent claim 15 is allowable over the combination of Landen '735, Landen '057 and Herr for reasons discussed in detail above with respect to claims 1 and 13.

Amended independent claim 16 recites a method of making a closure and container package that includes providing a one-piece container having an open end

surrounded by a cylindrical wall with a central axis and a cylindrical outer surface, a plurality of spaced projections extending radially outwardly from the cylindrical outer surface and a plurality of circumferentially spaced flexible resilient spring elements extend radially outwardly from the cylindrical outer surface and angularly disposed between the projections. A closure is provided and assembled to the container by engaging an axial edge of the cylindrical skirt with the spring elements on the container at positions on the spring elements spaced radially outwardly from the cylindrical outer surface of the container. Claim 16 thus is allowable over Landen '735, Landen '057 and Herr for reasons discussed in detail above in connection with claims 1 and 5.


It therefore is believed and respectfully submitted that all claims 1-9 and 13-16 remaining in the application are allowable at this time, and favorable action is respectfully solicited.

Please charge any fees associated with this submission to Account No. 15-0875 (Owens-Illinois).

Respectfully submitted,

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